

James Alan Bush  
1211 East Santa Clara Avenue #4  
San Jose, CA 95118  
(408) 982-3272

Plaintiff in pro per

**FILED**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

James Alan Bush, ) Case No.: C 08-01354 (RS) JF  
Petitioner, )  
v. ) MEMORANDUM OF POINTS AND  
Valley Medical Center: Emergency ) AUTHORITIES IN SUPPORT OF  
Psychiatric Services, ) PLAINTIFF'S PETITION FOR INJUNCTIVE  
Respondent. ) AND DECLARATORY RELIEF AND DAMAGES  
FOR REFUSAL TO PERMIT REVIEW OF  
PERSONAL RECORD  
Judge Jeremy Fogel

**MEMORANDUM OF POINTS AND AUTHORITIES**

Petitioner, James Alan Bush, in support of his petition for  
injunctive and declaratory relief and damages for refusal to permit  
review of his medical records, against Respondent, Valley Medical  
Center: Emergency Psychiatric Services, submits the following  
memorandum of points and authorities:

- 1 A. An individual may bring a civil action against an agency whenever  
2 the agency refuses to comply with an individual's lawful request to  
3 inspect pursuant to Civ. Code § 1798.34(a) [Civ. Code § 1798.45(a)].  
4 In any suit brought under Civ. Code § 1798.45(a) the court may enjoin  
5 the agency from withholding the records and order the production  
6 to the complainant of any records improperly withheld from the  
7 complainant. The court is to determine the matter *de novo*, and may  
8 examine the contents of any agency records in camera to determine  
9 whether the records or any portion thereof may be withheld as being  
10 exempt from the individual's right of access. The burden is on the  
11 agency to sustain its action [Civ. Code § 1798.46(a)].
- 12 B. Patient access to health records is generally governed by Health &  
13 Safety Code § 123100 *et seq.*, and the Information Privacy Act [Civ.  
14 Code §§ 1798.32, 1798.34. Exemptions to the Information Privacy Act  
15 are stated in Civ. Code §§ 1798.40-1798.44.
- 16 C. A provider of health care may also disclose medical information  
17 relevant to a patient's condition, care, and treatment to a probate  
18 court investigator in the course of any investigation required or  
19 authorized in a conservatorship proceeding under Guardianship-  
20 Conservatorship Law, as defined in Prob. Code § 1400, or to a  
21 probate court investigator, probation officer, or domestic relations  
22 investigator engaged in determining the need for an initial  
23 guardianship or continuation of an existing guardianship [Civ. Code  
24 § 56.10(c)(12)].
- 25 D. A health care provider may disclose to a family member, another  
26 relative, a domestic partner, or a close personal friend of the

1 patient, or to any other person identified by the patient, medical  
2 information directly relevant to that person's involvement with the  
3 patient's care or payment related to the patient's care [Civ. Code §  
4 56.1007(a)].

5 E. If a patient requests it in writing, any entity that maintains  
6 medical information for any reason, must provide the patient, at no  
7 charge, with a copy of any medical profile, summary, or information  
8 maintained by the entity with respect to the patient [Civ. Code  
9 § 56.07(a)]. Patient records that are subject to inspection by  
10 the patient pursuant to Health & Safety Code § 123110 may not be  
11 disclosed. The health care provider may also charge a fee for the  
12 preparation of a summary of patient records.

13 F. Although a health care provider has the discretion to decide  
14 whether to reveal information under Civ. Code § 56.16, this  
15 discretion must be exercised with prudence, circumspection, and  
16 tact, and health care providers should adopt standard policies and  
17 procedure to govern the release of information under this section  
18 [Colleen M. v. Fertility & Surgical Assocs. of Thousand Oaks (2005)  
19 132 Cal. App. 4th 1466, 1475, 34 Cal. Rptr. 3d 439]. Moreover,  
20 evidence of the disclosure practices of other health care providers  
21 in the same field and recommendations by health care organizations  
22 may be used as proof on the issue of whether or not disclosed  
23 information was "general" and subject to being disclosed [Colleen  
24 M. v. Fertility & Surgical Assocs. of Thousand Oaks, *supra*].

25 G. Local officials and employees are liable for violation of  
26 constitutional rights if either (1) the challenged constitutional

1 rights were clearly established at time of challenged conduct and  
2 they knew or should have known of the rights and that their conduct  
3 violated the rights, or (2) they acted with malicious intent to  
4 deprive constitutional rights or cause other injuries. [Wood v.  
5 Strickland (1975) 420 U.S. 308, 321-322, 95 S. Ct. 992, 43 L. Ed. 2d  
6 214]

7 H. Private individuals: A conspiracy by private individuals, not acting  
8 under color of state law, may be of such magnitude and effect as  
9 to work a deprivation of equal protection of the laws, or of equal  
10 privileges and immunities on the laws [Collins v. Hardyman (1951)  
11 341 US 651, 663, 95 L ed 1253, 1260, 71 S Ct 937].

12 I. When petitioner in 42 U.S.C.S. § 1983 claim appears *in pro se*,  
13 court must construe pleadings liberally and afford petitioner  
14 benefit of any doubt; court must give *pro se* litigant leave to  
15 amend his complaint unless it is absolutely clear that deficiencies  
16 of complaint could not be cured by amendment, and give petitioner  
17 statement of complaint's deficiencies before dismissing case  
18 [Karim-Panai v. Los Angeles Police Dep't (9th Cir. 1988) 839 F.2d  
19 621, 623; Eldridge v. Block (9th Cir. 1987) 832 F.2d 1132, 1135-1136]  
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